

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-219929.2

DATE: *March 31, 1986*

MATTER OF:

Roebbelen Engineering, Inc.--Reconsideration

DIGEST:

Bid, based on subcontractor's quotation that omitted items, properly was rejected where the use of another available quotation would have rendered the bid other than low.

Allen L. Bender, Inc. objects to our decision in Roebbelen Engineering, Inc., B-219929.2, Dec. 20, 1985, 85-2 CPD ¶ 691, that sustained Roebbelen Engineering's protest of the Army Corps of Engineer's failure to reject Bender's low bid under invitation for bids (IFB) No. DACA05-85-B-0147, where Bender alleged two mistakes in preparing its bid. The IFB was issued for the construction of the Integration Support Facility at McClellan Air Force Base, California. Bender contests the subsequent contract award to Roebbelen, and contends that there was clear and convincing evidence of its intended bid and that the bid would remain low. Bender also contends that it had no notice of Roebbelen's protest and did not know of its right to participate in the protest as an interested party.

We affirm our prior decision.

In our decision, we found that the Corps reasonably corrected one mistake, but that as to the second mistake--Bender's reliance on a potential subcontractor's price quotation that omitted items necessary for the project--there was no clear and convincing evidence of the intended bid price or that absent the mistake the bid would have been the low bid. We therefore held that the bid could not be corrected nor the mistakes waived and that the bid had to be withdrawn. See Fortec Constructors, B-203190.2, Sept. 29, 1981, 81-2 CPD ¶ 264. The Corps subsequently awarded the contract to Roebbelen, the second low bidder, on January 15, 1986.

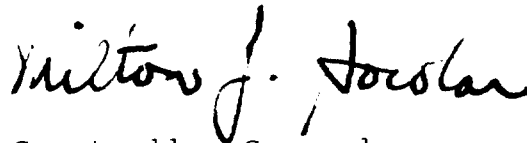
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Under our Bid Protest Regulations, 4 C.F.R. § 21.3(a) (1985), the Corps should have given Bender immediate notice of Roebbelen's protest, with instructions to communicate further directly with this Office, because Bender, as low bidder, was an interested party. While Bender may not have received immediate notice of the protest, it concedes that it was aware of the protest. Moreover, Bender received copies of the Corps' report on the protest and the Corps' supplement to its agency report. Bender thus had actual notice of the protest and should have inquired about its right to participate in the proceeding.

In any event, Bender's contention that it can clearly establish its intended bid is based on a misunderstanding of applicable law. The undisputed facts of this case are that Bender relied on a potential subcontractor's quotation that omitted items while other quotations that covered the items were available, including a quotation which Bender previously had used in its worksheets. That quotation, if used as a basis for correction, would not have displaced Bender as the low bidder, while at least one other available quotation would have caused Bender's bid price to exceed Roebbelen's.

The law does not permit a bidder to establish its intended bid price by recalculating and changing its bid after bid opening to include factors for which the bidder did not intend a precise price before bid opening, LABCO Constr., Inc., B-219437, Aug. 28, 1985, 85-2 CPD ¶ 240, except where there is clear and convincing evidence that the bidder intended to price the factor and the available prices fall within a narrow range of uncertainty significantly lower than the next lowest bid. Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369, aff'd, Vrooman Constructors, Inc.--Request for Reconsideration, B-218610.2, Mar. 17, 1986, 86-1 CPD ¶ _____. Although Bender asserts that it would have reverted back to the previously selected subcontractor's quotation if it had been aware of the omissions from the quotation upon which it relied, the fact remains that we cannot know with any reasonable degree of certainty what Bender would have done; we can only assume or speculate. Since quotations were available that would have caused Bender's bid to be higher than Roebbelen's, an award to Bender would have compromised the integrity of the competitive bidding system. See Fortec Constructors, B-203190.2, supra.

Our prior decision is affirmed.



Acting Comptroller General
of the United States